

**UNITED STATES TAX COURT**  
**WASHINGTON, DC 20217**

ANONYMOUS 1 AND ANONYMOUS 2,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 12472-11W.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	

**ORDER AND DECISION**

On July 22, 2009, petitioners each filed a Form 211, Application for Award for Original Information, with respondent's Whistleblower Office. Petitioners' whistleblower submissions related to their former employer (hereinafter referred to as Company X). On April 26, 2011, respondent sent each petitioner a letter rejecting their claims for an award because "the information you provided did not result in the collection of any proceeds." On May 26, 2011, petitioners timely filed a petition with this Court along with a Motion to File Petition for Whistleblower Action Under Code Section 7623(b)(4) Under Seal and Anonymously. Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, and all rule references are to the Tax Court Rules of Practice and Procedure.

On September 16, 2011, the Court filed respondent's Motion for Summary Judgment. On October 24, 2011, the Court filed petitioners' Response to Respondent's Motion for Summary Judgment. On June 20, 2012, the Court filed Company X's Motion to Intervene. Respondent asserts that he is entitled to summary judgment because petitioners do not meet the threshold requirements for an award pursuant to section 7623(b). A whistleblower is generally entitled to an award if the Secretary proceeds with an administrative or judicial action based upon the information provided by a whistleblower and collects proceeds. See Cooper v. Commissioner, 135 T.C. 70, 73-74 (2011). Respondent contends that he did not institute an administrative or judicial action and collect proceeds based upon the information provided by petitioners.

Pursuant to Rule 121, summary judgment is appropriate if there is no genuine dispute as to any material fact. Respondent bears the burden of establishing that no genuine dispute as to a material fact exists and that he is entitled to judgment as a matter of law. See Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). When a motion for summary judgment is made and properly supported, the adverse party may not rest upon mere allegations or denials of the pleadings but must set forth specific facts showing that there is a genuine issue for trial. Rule 121(d). A whistleblower award is dependent upon both the initiation of an administrative or judicial action and the collection of proceeds. Cooper v. Commissioner, 136 T.C. 597, 600 (2011). In addition, the Court recently held that no relief is available to whistleblowers unless the prerequisites of section 7623(b) are met (i.e., initiation of an administrative or judicial action and the collection of proceeds). See Cohen v. Commissioner, 139 T.C. \_\_\_, \_\_\_ (slip op. at 8) (Oct. 9, 2012).

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Petitioners provided respondent with information relating to Company X and approximately 90 of Company X's clients. Respondent evaluated petitioners' information for almost two years, yet asserts that he did not institute an administrative or judicial action and collect proceeds relating to Company X or its clients. Furthermore, after the Whistleblower Office denied petitioners' claims, a separate division of the IRS opened what respondent asserts is an independent investigation into Company X. While we question whether the information provided by petitioners was used in the subsequent investigation, section 7623 does not provide a mechanism for petitioners to challenge respondent's assertion. See Cohen v. Commissioner, 139 T.C. at \_\_\_ (slip op. at 9) (holding that "Congress \* \* \* has charged the Commissioner with resolving these claims and has not provided remedies until after an administrative or judicial action and the collection of proceeds."). Respondent established that petitioners have not met the prerequisites of section 7623(b) and petitioners have not set forth specific facts showing that there is a genuine issue for trial. See Rule 121(d). Accordingly, respondent's motion for summary judgment shall be granted.

Upon due consideration of the foregoing, it is

ORDERED that respondent's Motion for Summary Judgment filed September 16, 2011, is granted. It is further

ORDERED that Company X's Motion to Intervene filed June 20, 2012, is denied as moot. It is further

ORDERED that, in addition to regular service on the parties, the Clerk of the Court shall serve a copy of this Order on Company X at the address provided in the Court's Order dated July 5, 2012. It is further

ORDERED and DECIDED that respondent's determination that petitioners are not entitled to an award pursuant to section 7623(b) is sustained.

**(Signed) Maurice B. Foley  
Judge**

Entered: **NOV 02 2012**